

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 14-5009 (DSD/JJK)

Christopher Dineaa Bahtuoh,

Petitioner,

v.

ORDER

Michelle Smith,
Warden,

Respondent.

Frederick J. Goetz, Esq. and Goetz & Eckland PA, 615 1st Avenue NE, Suite 425, Minneapolis, MN 55413, counsel for petitioner.

Elizabeth R. Johnston, Hennepin County Attorney's Office, 300 South 6th Street, Suite C-2000, Minneapolis, MN 55487 and James B. Early, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101, counsel for respondent.

This matter is before the court upon the objections by petitioner Christopher Dineaa Bahtuoh and respondent Michelle Smith to the April 12, 2016, report and recommendation of Magistrate Judge Jeffrey J. Keyes. The magistrate judge recommended that the court deny Bahtuoh's petition for writ of habeas corpus, and issue a certificate of appealability on the following question: Was the finding of the Minnesota Supreme Court that Bahtuoh's trial counsel's performance was not constitutionally deficient when he told the jury that Bahtuoh would testify but later advised Bahtuoh not to testify an unreasonable application of clearly established federal law or based on an unreasonable determination of the facts? Smith objects to the issuance of a certificate of appealability.

Bahtuoh essentially argues that the court should answer "yes" to the question contained in the certificate of appealability, find that Bahtuoh was prejudiced by his trial counsel's constitutionally deficient performance, and grant his petition.

The court reviews the report and recommendation de novo. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b). After a thorough review of the file and record, the court finds that the report and recommendation is well-reasoned and correct. Accordingly, **IT IS HEREBY ORDERED** that:

1. Smith's objection [ECF No. 27] to the magistrate judge's report and recommendation is overruled;
2. Bahtuoh's objections [ECF No. 28] to the magistrate judge's report and recommendation are overruled;
3. The magistrate judge's report and recommendation [ECF No. 24] is adopted in its entirety;
4. Bahtuoh's petition for a writ of habeas corpus [ECF No. 1] is denied; and
5. A certificate of appealability is issued on the following question: Was the finding of the Minnesota Supreme Court that Bahtuoh's trial counsel's performance was not constitutionally deficient when he told the jury that Bahtuoh would testify but later advised Bahtuoh not to testify an unreasonable application of clearly established federal law or based on an unreasonable

determination of the facts?

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 6, 2016.

s/David S. Doty
David S. Doty, Judge
United States District Court